

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO.No.81-M of 1998

DATE OF ORDER: 1.12.2006

Hardeep

...Petitioner(s)

Versus

Sunita

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Dr. Surya Parkash, Advocate.

Mr. Arun Jain, Advocate.

M.M. AGGARWAL,J

This is an appeal against judgment dated 24.4.1998 passed by Additional District Judge, Hisar whereby petition under Section 13 of the Hindu Marriage Act for dissolution of marriage filed by the present appellant i.e husband Hardeep against his wife Sunita respondent was dismissed.

The marriage in this case had taken place on 10.5.1989 at Bahadurgarh. The parties had lived as husband and wife at Hansi but no child was born out of the wedlock. At the time of marriage, appellant is stated to be a Probationary Officer in Bank but he was preparing and

appearing for Central Services Examination.

According to the appellant, respondent wife did not cooperate with him and started torturing him. She was suffering from inferiority complex and never wanted appellant to get high position in life. Then on 3.2.1990, when she was at matrimonial home at Hansi, she started quarrelling with him and other family members without any rhyme and reason and created a scene by coming out of the house into street and then when he along with his family members as also one Ram Kumar was present in the house, she deliberately poured kerosene oil upon herself and put her ablaze with the calculated mind of establishing that she could use coercive methods. Then he (husband appellant) had doused her flames. That respondent-wife was in fact guilty of attempting to commit suicide but she falsely got registered the case for the offence under Section 498-A IPC in which appellant, his aged parents of the appellant and sister-in-law were arrested and remained in jail for several days.

Further petitioner-husband was selected in the Central Services to be posted as ACP but respondent-wife created problems. Later on, appellant was selected for HCS post and again respondent created problems against his appointment and the appellant could get the appointment only after filing writ in this Court. Earlier a petition for divorce had been filed by the husband in the year 1990, which was dismissed on merits on 9.10.1992 copy Annexure R-11 and appeal had been filed in this Court against that judgment but that was dismissed as husband did not pay the maintenance.

In the earlier petition, ground of cruelty had been taken but since there was FIR of the occurrence dated 3.2.1990 and that matter was

pending trial, grounds of cruelty of incident of 3.2.1990 were not taken into consideration and discussed. In the present petition, there was an issue whether the petition was barred by principle of resjudicata. Additional District Judge had held that all the instances of cruelty except incident of 3.2.1990 were barred by principle of resjudicata and only incident of 3.2.1990 was considered and it had been held that the appellant was not entitled to decree of divorce on the ground of cruelty.

Counsel for the appellant-husband had argued that the marriage took place in the year 1989. Parties had lived together only for short time and they are living separately since 1990 and it is a broken marriage. It was argued that false FIR was got registered of the incident of 3.2.1990. Appellant-husband, his father, mother and his sister were arrested and the appellant-husband could not get service as ACP and then as HCS Officer and he could get the service only after a writ petition was filed in this Court and order dated 22.7.1993 (copy Annexure P-2) was made. It was argued that in view of the judgment of the Hon'ble Supreme Court reported in Naveen Kohli v. Neelu Kohli 2006(2) RCR (Civil) 290, it is a fit case, where marriage should be dissolved by decree of divorce.

On behalf of the respondent-wife, it was argued that from the very beginning, petitioner-husband had made up his mind not to keep the wife. He had even written letter copy Annexure R-13 just after three months of the marriage. It was argued that the appellant cannot be permitted to take advantage of his own wrong.

However, perusal of language of R-13 shows that petitioner wanted his wife to rise in life. From the record, it would come out that earlier petition for divorce had been filed in the year 1990 by the husband,

which was dismissed. There were proceedings under Section 125 Cr.P.C, which was got dismissed as withdrawn by the wife (copy Annexure P-4) on 6.11.1993. The present petition for divorce had been filed on 31.7.1995 and was decided on 24.4.1998, more than eight years back.

Before hearing the arguments in this appeal, parties had been called to come present. They had appeared but then again it was found that no settlement between the parties in the form of mutual divorce or living together was possible. Husband is stated to be an HCS Officer whereas the wife is also stated to be employed in some private concern and may be earning some money.

For the incident of 3.2.1990, an FIR No.308 dated 9.12.1990 under Section 498-A IPC had been registered at P.S City Bahadurgarh at the instance of father of the respondent-wife. Annexure P-3 shows that all the witnesses including respondent-wife had turned hostile in that case and did not support their allegations and then accused, who happened to be present appellant i.e husband Hardeep, his father, mother and sister had been acquitted on 16.8.1994. Even in spite of that, things did not improve and present petition for divorce had been filed in July 1995.

Now more than 17 years have passed when the marriage took place. There had been litigation in the form of earlier petition under Section 13 of the Hindu Marriage Act, 125 Cr.P.C, a criminal case for offence under Section 498-A IPC and second petition for divorce filed in 1995. Hon'ble Supreme Court in para 62 of the judgment reported in Naveen Kohli v. Neelu Kohli 2006(2) RCR (Civil) 290 had observed as under:

“Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of

the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.”

When the case for the offence under Section 498-A IPC was registered and the husband, his sister and parents-in-law were arrested and thereafter during trial the witnesses turn hostile and husband and other relatives are acquitted, then it is itself a cruelty practised. This is further born out from the fact that father of the respondent-wife had written complaints copy Annexure P-1 so that husband does not get posting as ACP and then posting of the husband to the HCS was delayed at the instance of respondent or her father and husband could get appointment only through the intervention of the Court.

In the case before Hon'ble Supreme Court, parties had been living separately for more than 10 years whereas in this case, they had been living separately for more than 16 years and there had been criminal and civil proceedings between the parties. The marriage has subsisted only in name. It has wrecked beyond the hope of salvage. Respondent still does not want divorce by mutual consent. Preservation of marriage is totally unworkable and is source of misery for the parties. Marriage has definitely

been irretrievably broken down.

Under these circumstances, petition for divorce is allowed. It is directed that the marriage between the parties shall stand dissolved subject to the condition that the husband-appellant, who is an officer of Haryana Civil Services pays/deposits Rs.10,00,000/- as permanent alimony. Let Rs.5,00,000/- be paid within a period of three months and another Rs.5,00,000/- within six months. Failing to pay or deposit this permanent alimony as directed, this appeal and the petition for divorce shall stand dismissed.

The amount as ordered be deposited in this Court.

December 01, 2006
manoj

(M.M. AGGARWAL)
JUDGE